

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

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UNITED STATES OF AMERICA, : 17-CR-0004(JJM)
:
:
vs. : United States Courthouse
:
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:
JAY GACCIONE, : Friday, June 28, 2019
Defendant. :
:
- - - - -X

TRANSCRIPT OF CRIMINAL CAUSE FOR SENTENCING
BEFORE THE HONORABLE JOHN J. MCCONNELL, JR.
UNITED STATES DISTRICT COURT JUDGE

A P P E A R A N C E S:

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1 (In open court; 10:16 a.m.)

2 THE COURT: Good afternoon, everyone. We're
3 here this morning -- I'm sorry. Good morning,
4 everyone. We're here this morning for sentencing in
5 the case of the United States vs. Jay Gaccione, 17-4.

6 Would counsel identify themselves for the
7 record.

8 MS. BARTON: Good morning, your Honor. Denise
9 Marie Barton for the United States.

10 THE COURT: Good morning, Ms. Barton.

11 MR. FITZGERALD: Kevin Fitzgerald for Mr.
12 Gaccione.

13 THE COURT: Good morning, Mr. Fitzgerald. Mr.
14 Gaccione.

15 THE DEFENDANT: Good morning.

16 THE COURT: Mr. Gaccione, did you receive a copy
17 of the presentence report that the probation department
18 issued?

19 THE DEFENDANT: Yes, I did.

20 THE COURT: Did you review that with your
21 lawyer?

22 THE DEFENDANT: Yes.

23 THE COURT: Did he answer any questions that you
24 had about that?

25 THE DEFENDANT: Yes.

1 THE COURT: How we're going to proceed this
2 morning, I'm going to review the calculation of the
3 guideline range. We'll go through that. I'll see if
4 there's any objections to that or the presentence
5 report. If there are, I will rule on them.

6 The government will then make its sentencing
7 recommendation. I understand from my clerk that there
8 may be a victim statement?

9 MS. BARTON: Yes, your Honor.

10 THE COURT: Okay. Your lawyer will then be able
11 to make his sentencing recommendation. You'll be
12 allowed to speak if you choose to. You don't have to.
13 It's purely up to you.

14 And then I'll get on with the sentence, okay?

15 THE DEFENDANT: Thank you.

16 MR. FITZGERALD: Thank you.

17 THE COURT: The guidelines are complicated, and
18 I rely on those as presented in the presentence report,
19 but let me summarize them as best I can.

20 Counts Seven, Eight and Nine, which have to do
21 with distribution and possession of child pornography
22 carries with it a base offense level of 22. There's a
23 five-point increase because the distribution involved
24 consideration; that is, there was payment or other
25 consideration for the distribution. There's five

1 points added because the pattern of activity involved
2 sexual abuse or exploitation of a minor. There's two
3 points added for the use of a computer. There's two
4 points added because of the number of images involved,
5 for an adjusted offense level of 36.

6 Count One, which is the sexual exploitation of a
7 minor, carries with it a base offense level of 32.

8 There are two points added because the age of the minor
9 was between 12 and 16. There are two points added
10 because the defendant admitted to engaging in sexual
11 intercourse with Minor Victim #1. There are two points
12 added because the distribution was raised to the level
13 of knowing distribution. There are two points added
14 because the defendant is the father of the Minor Victim
15 #1, for an adjusted offense level of 40.

16 That's the same guideline calculation for Count
17 Two, Count Three, Count Five, Count Six. Because there
18 are multiple counts, the multiple-count adjustment has
19 six units for the counts which adds five points for a
20 combined offense level of 45. And a Chapter 4
21 enhancement because the defendant is a repeat and
22 dangerous sex offender against minors, five points are
23 added for a total offense level of 50. There are three
24 points -- I assume the government wishes to make a
25 motion on the third point?

1 MS. BARTON: Yes, your Honor.

2 THE COURT: Three points reduction for
3 acceptance of responsibility. And because the
4 guidelines don't allow an offense level to be greater
5 than 43, the offense level is 43.

6 Mr. Gaccione has no criminal history points and
7 therefore is a category I. Total offense level of 43,
8 Criminal History Category I, carries with it a
9 recommended period of incarceration of 2,280 months,
10 which I believe is approximately 190 years.

11 Ms. Barton, any objection to the calculation of
12 the guidelines or to the presentence report?

13 MS. BARTON: No objection, your Honor.

14 THE COURT: You hesitated.

15 MS. BARTON: Oh, the only objection -- it's not
16 objection, your Honor -- is your Honor set forth a
17 number of months of 2,280 months. I believe that was
18 the statutory maximum period, whereas the guideline
19 chart sets forth life as the guideline range. And that
20 was my hesitation, your Honor.

21 THE COURT: I appreciate that. The guideline
22 chart says life, but let me -- I'll accept that.

23 MS. BARTON: Thank you.

24 THE COURT: Mr. Fitzgerald, any objection to the
25 PSR or to the guideline range?

1 MR. FITZGERALD: No, your Honor.

2 THE COURT: Great. Thank you.

3 Ms. Barton, I'll hear from the government.

4 While you're preparing, Ms. Barton, the Court in
5 addition received a sentencing memorandum from the
6 government, received one from Mr. Fitzgerald on behalf
7 of Mr. Gaccione and also received a victim's letter as
8 well. I've considered all those, and thank you all for
9 that input.

10 Ms. Barton.

11 MS. BARTON: Thank you, your Honor. Your Honor,
12 let me begin by addressing the government's sentencing
13 recommendation.

14 As your Honor has seen in our memorandum, the
15 government has recommended a term of 60 years
16 imprisonment for this defendant. It did not arrive
17 lightly at that decision, but the recommendation just
18 as easily could have been 75 years, a hundred years or
19 150 years. The point of the government's
20 recommendation is that Mr. Gaccione serve a lifetime
21 sentence and that he never set forth out of prison.
22 This crime warrants it.

23 The information that was set forth in the
24 government's sentencing memorandum and that will be
25 discussed here in summary is difficult to hear. What

1 the defendant did and how the victim has suffered is
2 revolting. It was revolting to write, it was revolting
3 to learn of, and it will be revolting to discuss it
4 here. And while I will try and discuss it as the
5 decorum of this courtroom requires, we are here because
6 the defendant raped, molested and abused his daughter
7 so I do need to speak frankly about what did happen.

8 The sentence that the government has requested
9 and that we believe is the right sentence in this case
10 must address, of course, all the 3553(a) factors, but
11 what I do not want to be lost among all of those
12 technical factors in the statute is the harm that this
13 victim has suffered. The victim, the defendant's
14 eldest daughter, who was between 12 and 14 years at the
15 time that he repeatedly molested her, is not here
16 today. She didn't want to come. She didn't want to
17 see her father.

18 I've met with the victim a few times throughout
19 this investigation and during the pendency of this
20 case, and I've spoken with her mother a number of
21 times. This victim at the time that her father
22 molested her was a young girl who was struggling
23 socially, emotionally and academically, all of which
24 was certainly known to her father. She was a child who
25 did not have a lot of friends. She was, for lack of a

1 better term, a bit of a social outcast. She had at the
2 time that we met her during this investigation what she
3 called one friend. That friend was also a bit of an
4 outcast. She was a child who had I believe muscular
5 dystrophy and she was in a wheelchair, and she has
6 actually since passed away.

7 This child was basically an isolated child. She
8 also was one that had some responsibilities for caring
9 for her younger brothers and sisters because her mother
10 was working full-time trying to support the family.
11 Her father took advantage of her social isolation, the
12 fact that she was somebody who struggled and the fact
13 that she had some emotional difficulties. She also was
14 at the time on an IEP at school for several challenges
15 she had academically and emotionally. She lived in,
16 essentially, a house of horrors for the time that her
17 father was abusing her and was taking pictures of that
18 abuse, further compounding the harm that she suffered
19 at his hands.

20 She struggled all through that time, as one
21 could clearly imagine, with just this series of
22 conflicting emotions, fear, shame, embarrassment,
23 trying to reconcile that this was her father, somebody
24 she was supposed to be able to trust and love, learn
25 from and look up to and yet he took away her childhood

1 and he abused her in simply unspeakable ways.

2 When I met with her the week after the case was
3 brought to us, this child was essentially a shell. She
4 had an incredibly hard time talking about what was done
5 to her, what her father did, and as was provided in
6 discovery to defense counsel as well as to the
7 probation officer, you can see in the videotaped
8 interview of her, she's almost robotic and has this
9 lack of affect in the way she talks of the sex acts
10 that her father had her do and his directing her to
11 masturbate or show her genitals and breasts and the
12 other acts.

13 I met with her again on Tuesday with her mother.
14 This child only took advantage of the counseling
15 services that were offered by Day One as well as a
16 private counselor down near her home for a short period
17 of months. It wasn't something she's ready to do.
18 Like many victims of sexual trauma, especially a child,
19 she simply hasn't come to terms with what has happened
20 to her, and she probably will not come to terms with it
21 for some period of time. And I don't think that it is
22 disingenuous for me to say that she will never fully
23 recover.

24 I think all of us in this courtroom are
25 particularly aware over the past year from hearing of

1 sexual abuse survivor stories, some of these people
2 never recover from it. I think it is reasonable to say
3 to this Court that this child is going to suffer the
4 scars of her father's abuse for the rest of her life.

5 In addition to stopping counseling, she
6 struggled in school in her hometown after her arrest,
7 partly because of the publicity, partly because she was
8 just struggling with what had happened to her and her
9 father was out of the house and the change in her
10 family. She missed a lot of school. There was truancy
11 court, and she was unable to complete coursework.

12 She changed schools and moved to go live with a
13 relative. She was doing better for a period of time
14 but then continued to struggle, and she's dropped out
15 of school. She is now trying to get her GED, but she's
16 struggling because this child, who is 17 years old now,
17 she can't fully read. This defendant basically took
18 away years of her academic learning because he abused
19 her for this time, and because she was struggling
20 during this period of abuse and has been, she's not
21 been able to go to school and complete her coursework
22 which will follow her through the rest of her life.
23 She's trying, but it's exceptionally hard for her. Her
24 mother can speak more to this.

25 What I'm trying to convey to the Court is that

1 the defendant's molestation of her and the defendant's
2 photographing of her has caused such a spiral of
3 problems for this victim, and it is something that will
4 take her years to recover from, if she ever does. The
5 nature of this crime warrants the sentence that the
6 government has requested and warrants a life sentence,
7 whatever the Court thinks that that sentence should be.
8 The defendant's actions, although they would be equally
9 heinous or they would be heinous if they occurred on
10 one event, if there was one incident of molestation,
11 that's not what we have in this case.

12 This is a man -- so we look to his history and
13 characteristics of the defendant -- who for a period of
14 years, for approximately one time, two times per week,
15 would molest his daughter forcing her to have
16 intercourse, orally copulate him, he would do the same
17 to her, he would direct her to masturbate, he would
18 cause her to pose and show herself; acts that no child
19 should have to go through and certainly not at the
20 hands of her father.

21 There was no sign of this stopping. What
22 stopped it was the arrival of the authorities in the
23 execution of that search warrant at that house of
24 horrors. This defendant is a danger to society. We
25 know that he abused his daughter. We saw the pictures.

1 We heard her statement, and we have his admission.

2 We also know that this defendant is a danger to
3 society and is a risk to children. Although it is
4 secondary to the harm that he caused to his daughter,
5 what cannot be forgotten by this Court in sentencing is
6 that we came to this case because he was tied up in an
7 investigation involving another target in South Africa.

8 In the PSR, there is transcription or statements
9 of the chats that transpired between this defendant and
10 the man in South Africa. And in those chats, the
11 defendant is talking -- and I'm obviously paraphrasing
12 here because the Court has the material -- but the
13 defendant is speaking with this man, Mr. K'An Burne, in
14 South Africa, about Mr. Burne's 3- and 5-year-old
15 children.

16 When Mr. Burne is explaining that he does engage
17 in sex acts with his toddler and preschool age
18 children, Mr. Gaccione asked him for pictures and then
19 asked him specifically if he has any with cum on it.
20 He then talks about how he is getting hot thinking
21 about how you can just do anything to any of them.
22 They then have a back and forth about these young
23 children of Mr. Burne.

24 We also have Mr. Burne sharing what he refers to
25 as the motherhood of child pornography with Mr.

1 Gaccione. And we have Mr. Gaccione admitting in his
2 interview with law enforcement agents that he sent
3 pictures of his daughter to someone on the internet.

4 Now, I know the Court will recall that at the
5 change of plea there was some consternation by Mr.
6 Gaccione about the fact that he never sent pictures of
7 his daughter. Whether that did or didn't happen is not
8 what's driving the government's recommendation;
9 obviously, the production charges are.

10 What we do know, however, is that Mr. Gaccione
11 admitted that he sent the pictures when he spoke to law
12 enforcement that day. We also know that while he was
13 midterm molesting his child every week, he told her
14 that he needed to take pictures of her so that he could
15 send them to people on the internet. We also know from
16 the chats we have with Mr. Burne and Mr. Gaccione that
17 after Mr. Gaccione refers to his 15-year-old daughter,
18 who was actually 14, that he sent six images. And that
19 we know from the metadata on the images and from the
20 production count at Count Six, that Mr. Gaccione took
21 pictures of his daughter a mere few days before he sent
22 images to Mr. Burne.

23 I raise this to show the nature of the crime and
24 to paint a picture of who Mr. Gaccione was. In his
25 memorandum, the defendant has taken -- made an effort,

1 and I expect he will be here today, to speak to how he's
2 grown as a person and how he has shown true remorse.
3 Although I take issue with that as a matter of
4 principle, I think looking to positive steps he may
5 have taken in the last two-and-a-half years is really
6 not what should be driving the sentence. We need to
7 look at him as a person as a whole over his lifetime.

8 What we know from Mr. Gaccione's own words that
9 are in paragraph 138 of the PSR is that Mr. Gaccione
10 was violent with his family. He said that when he
11 learned of his wife's extramarital affair, he smacked
12 her. He reported that another time he assaulted her
13 until she choked up blood. The victim, when I met with
14 her on Tuesday, talked about her father having these
15 rages and hiding in a bedroom with her younger brothers
16 and sisters and talking about the monster outside.

17 In paragraph 140 during this time of apparent
18 remorse and growth, Mr. Gaccione spoke in July 2018 and
19 expressed having, quote, "vivid dreams about revenge of
20 his family," close quote. Clearly this shows a lack of
21 remorse at least as of July 2018 when he is blaming
22 somebody else for what has caused him to be in prison
23 such that he is causing -- such that he is seeking
24 revenge on his family.

25 Mr. Gaccione has reported having a challenging

1 upbringing as a child. That still does not explain how
2 he can molest his daughter and then reach out to others
3 to seek images of children being molested and to share
4 images whether of his daughter or somebody else. As a
5 survivor of abuse, he should have been acutely aware of
6 the harm that it inflicts and carries.

7 The defendant has also not been a model prisoner
8 as we know from the PSR in paragraph 111. He's had
9 three disciplinary matters during his time at the
10 Wyatt. He appears to be insolent and not responsive or
11 not engaging in the behavior he should be. I'd like to
12 briefly respond to some of the points raised in the
13 defendant's memo.

14 The defendant makes a challenge as to the
15 double-counting in application and the driving up of
16 the numbers of the guideline calculations. If there
17 was a legal challenge to the guidelines for the
18 defendant to make, the time to have made them was at
19 the draft PSR stage or even now. None was made.

20 The defendant has attacked the guidelines as
21 lacking credibility. That argument has been raised
22 time and time again over the 12 years that I've been
23 prosecuting these cases and yet the Sentencing
24 Commission has not changed the guidelines. The Court
25 is obviously free to consider the guidelines and vary

1 upward or downward as it sees fit, but the guidelines
2 have remained the same to Count Four, the harm that is
3 occasioned by the various ways in which a crime can be
4 committed. But all that said, this attack on the
5 guidelines is essentially a red herring. And let me
6 explain why.

7 The defendant neglects, first at the outset,
8 that he effectively received a seven-point decrease
9 because of Chapter 5, Part A requires that when his
10 adjusted offense level reached 50, it would get dropped
11 down to 43. So to the extent there were seven points
12 that he challenges or is upset about, there was no
13 effect to them. As far as the challenge to the
14 specific enhancements, the defendant challenges the
15 enhancements as to computer use and the number of
16 images which would be four points. Then he also claims
17 that the pictures are grouped separately and that
18 drives up the guidelines.

19 Well, under the grouping rules that the Court
20 went through earlier today, the distribution of child
21 pornography and the possession of child pornography
22 counts, Counts Seven, Eight and Nine, resulted in one
23 point because they were grouped as one unit, and they
24 were added to a 40-point offense level. So all of this
25 smoke is smoke about all those challenges.

1 With respect to the challenge to grouping, the
2 grouping rules are an intentional design of the
3 guidelines and of the Sentencing Commission to address
4 the distinct harms occasioned by certain types of
5 crimes. Production of child pornography, sex
6 exploitation of a minor is one of the crimes that the
7 Commission has specifically excluded from grouping
8 rules and provides that it will be accounted for
9 separately. And that was done correctly in the
10 guidelines.

11 Clearly, anyone in their right mind would not
12 think that just because somebody has been molested
13 once, if they are molested two, three, four, five and
14 six times thereafter, the second through six times are
15 not a distinct harm. So what the defendant is asking
16 you to consider is basically let's group all five times
17 where the defendant molested and photographed that
18 molestation of his daughter because whether it was one
19 time or whether it was six times, it's the same harm.
20 Not true and just completely counter to any sense of
21 decency. And again, as a practical matter, those
22 grouping rules had very little effect on the increase
23 in the guidelines because everything was brought down
24 seven points.

25 The defendant also claims that the guidelines

1 are created in a conference room, not among
2 practitioners. I think the judges that have sat on the
3 Sentencing Commission, including the Honorable Charles
4 Breyer, who I practiced for ten years in front of,
5 Judge Patti Saris, Justice Pryor of the Eleventh
6 Circuit, all of those judges may take issue with
7 basically being called wrong; who don't know anything
8 about the reality of sentencing and the reality of
9 crimes. We have their input on the Sentencing
10 Commission, and they are learned practitioners who
11 understand the impact of the guidelines and the reasons
12 behind them.

13 The defendant also claims as to the victim when
14 he suggested that a lifetime sentence is not
15 appropriate that, quote, "the damage is not beyond
16 repair," end quote. Hope and potential abound for the
17 future. I hope hope and potential abound for this
18 child, but right now she's struggling and she has not
19 been able to move beyond this. And she is not someone
20 who is going to recover quickly from this.

21 The defendant has also made an Eighth Amendment
22 challenge. The case law that he cites, frankly,
23 inapposite. The *Graham* case that he cites does not
24 deal with lifetime sentences as to child pornographers
25 who are adults when they are sentenced. It deals with

1 a juvenile case as to lifetime sentences.

2 There also are -- it is a conflated argument, I
3 will say, in that the sentence that the government is
4 seeking is not retribution, it is not made for reasons
5 beyond punishment which is what obviously *Furman vs.*
6 *Georgia* and the other cases would obviously prohibit as
7 with the Eighth Amendment.

8 The sentence that is recommended by the
9 government is one that is made based on an interest in
10 punishing this defendant and protecting society from
11 him. In deterring him, should he ever get out and
12 others who are like him, from committing this sort of
13 heinous atrocity on any child, but particularly their
14 own children. And it also is so that we can seek some
15 sort of consistency in these cases.

16 In our memorandum, we set forth a number of
17 these cases that this Court, as well as Judge Smith,
18 has considered and has sentenced defendants. It's a
19 very, very difficult task as I write up the memorandum
20 and as I consider an appropriate sentence. I can only
21 imagine how it is to sit in your Honor's chair when
22 you're trying to decide what's worse, molesting three
23 children four times or molesting one child hundreds of
24 times? I don't know the answer to that. What I do
25 know is that each of those sentences warrants a life

1 sentence because Mr. Gaccione is a monster. He is a
2 monster who chose to take away his daughter's childhood
3 and to scar her forever. And he is a monster who
4 risked -- who presents a risk to others based on what
5 we know about him. And he is somebody who should never
6 ever walk out of the doors of a prison again.

7 At this point I ask if -- can I check and
8 see --

9 (Brief pause)

10 MS. GACCIONE: Hi.

11 THE COURT: Good morning. How are you?

12 MS. GACCIONE: Good morning. How are you?

13 THE COURT: Good, thank you.

14 MS. GACCIONE: I'm writing this letter on behalf
15 of myself and my daughter J [REDACTED] for what the crimes Jay
16 Gaccione has impacted our life. For J [REDACTED], not only
17 did he take away her childhood, he took away her
18 education. She can hardly read, write, spell, et
19 cetera. He took away that special thing she should
20 have shared with someone special, not her dad.

21 She has anxieties from everything that has
22 happened. Doesn't want pictures or videos taken of
23 her. I feel Jay deserves to pay for his crimes. What
24 he has impacted me from his crimes are the looks I get
25 from people in town, the anxieties, the depression, the

1 loss of my job. I was there for 11 years. Couldn't
2 work the hours they needed me for so I got no hours to
3 support the kids he left behind to support on my own.

4 I gave you everything I had to make this work.
5 It's pretty sad that you decided that I wasn't good
6 enough for you, that you had to look at little girls
7 and have sex with our daughter while I worked six days
8 a week at night to provide for the family. You used
9 that time to do the awful things to our daughter,
10 J[REDACTED]. She will struggle for the rest of her life to
11 have a healthy and trusting relationship.

12 There is no excuse for what you did to J[REDACTED]. I
13 am so angry. I will never stop being angry. What you
14 did to me and the kids is unforgivable. I never
15 thought in a million years the man that I loved for
16 many years could ever do something like this.

17 Now the kids have to be without their dad that
18 they knew and loved. The kids are going through some
19 stuff. I have one that is very angry. One that is
20 confused on where his daddy is. One that didn't
21 graduate because school was too much for him with
22 everything that happened. He is very depressed. One
23 that is always going to struggle in life. One that
24 will always love her dad, but will never truly
25 understand what he did until she is so much older.

1 I will be strong for our kids and protect them
2 from everything I can and love them for the both of us.
3 I'm not a hateful person so I don't hate you, but I no
4 longer love you. The little love I had left went away
5 when I had to listen to our daughter tell the officers
6 what you did to her and watch all four kids go through
7 basically a rape kit. You have no idea how bad that
8 hurt me to see them go through that.

9 The 10 year old freaks out every time she hears
10 or sees a cop car thinking they are coming back. This
11 is the hardest thing I have ever done to tell the kids
12 they will never see their daddy again. I don't think I
13 will ever get that day out of my head because that was
14 the day my whole world crashed around me and I
15 questioned everything. I don't think I will ever be
16 able to trust a man ever again. I have you to blame
17 for that.

18 I will take care of the kids like I have always
19 done by myself. I will make sure I teach them what a
20 healthy, loving relationship is supposed to be and
21 prevent them from being victims again. Make sure they
22 move forward in a positive way. The thought of the
23 kids never having a father in their life isn't fair to
24 them at all. Thanks for showing me the kind of person
25 you really were. I'm picking up the pieces of the life

1 the kids knew, and we will do it without you.

2 The only good thing that came out of this is
3 that you will never hurt me or the kids ever again, and
4 we'll be fine without you and better off. Thank you
5 for listening to me.

6 THE COURT: Thank you so much.

7 Anything further, Ms. Barton?

8 MS. BARTON: Nothing, your Honor.

9 THE COURT: Thank you very much.

10 Mr. Fitzgerald.

11 MR. FITZGERALD: Thank you, your Honor.

12 I think everybody agrees this is kind of a
13 particularly difficult sentencing so I wanted -- the
14 government made some kind of, you know, explanations at
15 the very beginning of their presentation. I'm going to
16 do the same, your Honor, that, you know, what I have to
17 say here I don't want to be misinterpreted, and I
18 certainly don't want it to be misinterpreted to the
19 detriment of Mr. Gaccione, okay.

20 I'm in no way using what they call "victim
21 blaming" in any of my argument here. And I'm also not
22 splitting hairs or trying not to split hairs in a sense
23 of trying to avoid culpability. And I also want to
24 just point out to the Court that Mr. Gaccione is very
25 much interested in the whole hearing here so if you've

1 seen him flat-faced or nonresponsive, that's because I
2 told him to do that.

3 So, your Honor, before I get into why I think
4 you should sentence Mr. Gaccione to a much lower
5 sentence of 25 years in prison, I just want to address
6 a couple of things that the government brought up.
7 First is I recommend or hope that the things that the
8 government mentioned out of my sentencing memo, you
9 remember the context in which I said them, as well as
10 the context in which they're presented in the PSR.

11 First, the comment about Mr. Gaccione having
12 vivid dreams of revenge on his family. That was in the
13 course of his counseling, and he was having these
14 dreams, not daydreams, when he was asleep having these
15 dreams. That's the kind of thing we want somebody to
16 disclose in counseling so they can work on that because
17 obviously there's a lot of turmoil going on in his
18 mind. That's not the way it was presented. So I would
19 like you to remember the context in which that came up.

20 The other is that I didn't make an Eighth
21 Amendment argument here, I didn't. This is not an
22 argument about it being an unconstitutional sentence.
23 In fact, the guideline -- not the guideline, but the
24 2200 months is the maximum penalty of all the charges
25 stacked. That's constitutional because Congress set

1 those limits. The point about the Eighth Amendment
2 issues is I just want the Court to consider what a life
3 sentence actually means and what it means for Mr.
4 Gaccione. And you have to go to the case law to show
5 that, what it actually means.

6 The last contextual disagreement I might have is
7 this issue of where I said that permanent damage; that,
8 you know, he shouldn't be treated as he's made
9 permanent damage. The context of that comment is
10 murder is permanent, and that's the context that was
11 taken from the case law and everything. When somebody
12 murders somebody, the victim is dead and they are never
13 coming back; that's permanent.

14 Certainly, Mr. Gaccione's daughter has suffered
15 trauma and it's going to take her an awful long time to
16 get over that, if she ever does get over that. I would
17 say that, you know, the trauma and the damage and the
18 stages she's going through that have been described to
19 you are absolutely normal for somebody who has gone
20 through something like this. But it's not permanent in
21 the way that being murdered is and that there's no
22 coming back.

23 She still has a life, and we hope certainly that
24 she's able to make something of that life. That's not
25 to say that Mr. Gaccione didn't damage her, didn't

1 cause her trauma, didn't cause all of this, but it's
2 not permanent in the sense of the end of her life.

3 Now, the government says that sentencing should
4 be about the person, and I agree and I think the Court
5 agrees, it absolutely has to be about the person
6 because we're not here to ratify the guidelines, we're
7 here to sentence Mr. Gaccione. In making that
8 sentencing determination, you have to look at what he's
9 done since he's been arrested; how he's reacted; how
10 he's lived these past two-and-a-half years because,
11 ultimately, there's an end to the sentence and he's
12 either someone who is going to grow, someone who is
13 going to get better mentally, or he's not.

14 What I'm suggesting in my sentencing argument
15 and in the sentencing memo is that he has shown rather
16 distinct growth in the time that he's been at the Wyatt
17 facility. He's been there for now two-and-a-half
18 years. I can tell you that when he first got in
19 probably for more than the first year he was a very
20 angry man. I can tell you that I was not his favorite
21 person because nobody wants to hear that they might be
22 going away for life. And, you know, those are the
23 discussions we had about what the maximum penalties are
24 and what he's looking at and what could happen to him.

25 I think it took a long time for him to really

1 grasp -- I mean, he hasn't fully grasped all of this,
2 he hasn't come to grips with it, but he's made
3 significant progress towards that, to the point where
4 now it's not denials or rationalizations that certainly
5 did come up during his interviews with the police when
6 he was initially arrested; that doesn't happen anymore.

7 Certainly, he can't tell you why he did this,
8 but I can tell you that he's not sitting around
9 wondering why he did this as other clients have, other
10 defendants have, instead of I did this and I'm sorry
11 for it and let's move forward. Some of those
12 defendants -- some of those individuals sit around and
13 just wonder why this happened to me, why did I do this,
14 why did this happen to me? That's not Mr. Gaccione.
15 He's moved beyond that into really understanding that
16 he did it, owning up to the fact that he did that, and
17 then just trying to move on from there.

18 He has participated in mental health counseling
19 out at the Wyatt. We talked about that just a few
20 seconds ago. For the most part, he's about at the
21 highest level that he can get for counseling out there
22 so he sees the counselor every four to six weeks when
23 the counselor comes in. He sees a psychiatrist on
24 video for, you know, medication purposes. But he's
25 doing what he can to address his mental health while

1 he's at Wyatt.

2 I don't agree that there's enough there, but
3 what there is, he's taken advantage of it. He's taken
4 classes. I listed classes in the sentencing
5 memorandum. It may be listed in the PSR as well. But
6 in there, not only mental health and some substance
7 abuse classes, but also sex-offender treatment classes.
8 So he's taken those steps.

9 The other thing he's done, your Honor, and this
10 is definitely unique among certainly defendants with
11 these charges but certain defendants in general, is he
12 has taken to be somewhat of the welcome wagon in the
13 pod where he's housed. Now, I don't know if the Court
14 knows, but at Wyatt everybody charged with these types
15 of offenses, all sex offenders, are segregated from the
16 rest of the population.

17 So Mr. Gaccione has been in that group of
18 individuals for pretty much the entire time he's been
19 there. And now when new people come in, when new
20 people are arrested and charged and everything and they
21 come in, he usually takes a minute to try and, you
22 know, either console them because they have been held
23 and they just don't understand why and all that and
24 they're sad. He's offered them food. He's offered
25 them a pillow in one instance to another client of

1 ours. Just basic human decency type of reactions to
2 help them at least get more comfortable in the
3 facility.

4 That kind of unselfishness is not normal out at
5 the Wyatt or any prison, as far as I know, but
6 certainly that makes it distinctly unique. And that
7 shows growth because he's not thinking about himself;
8 he's thinking outside of himself.

9 The other part of that is not just the other
10 prisoners who feel -- or that he reacts that way to; he
11 treats the staff with respect and he has the respect of
12 the staff out there. I don't remember particularly the
13 situations of insolence or anything like that, but I'm
14 pretty certain those were early on during his time at
15 Wyatt. At this point at Wyatt, he is fairly well
16 trusted amongst the staff.

17 And I'd just point out, your Honor, if you
18 didn't see Mr. Gaccione walk in, he's allowed a cane by
19 the medical staff and by the staff at the Wyatt. I
20 point that out because a cane can very quickly become a
21 weapon, but he is trusted with that and I think that
22 shows a level of respect that the staff has for him
23 knowing that he's not a violent guy and not somebody
24 who is going to act out on other people.

25 Your Honor, the government's asked -- they've

1 said effectively a life sentence, but they've asked for
2 a life sentence; 60 years in prison even with good time
3 is well over I believe 55 years. I apologize. 54
4 years is I think what it would come out to. That's a
5 life sentence. Should Mr. Gaccione actually live that
6 long, he would be 90 some-odd years old by the time
7 that happened. And he is not going to live that long.
8 Most of us, frankly, are not going to live that long.

9 That's a life sentence so let's -- they could
10 have said 70, they could have said 80, they could have
11 said 50, they could have said 40; it's all a life
12 sentence. I've asked for 25 years which I think is
13 potentially a life sentence, but there's also a
14 potential that towards the end he might be able to be
15 released. And that light at the end of the tunnel,
16 however dim, is still a light at the end of the tunnel.
17 And I think that that's something that Mr. Gaccione
18 deserves if for no other reason than the steps he's
19 made since he's been held.

20 Judge, I said before that I don't want to be up
21 here splitting hairs, but the government listed several
22 different cases -- sex-offender cases, sex-offense
23 cases -- and unfortunately I think that brings up the
24 idea of splitting hairs. Now we're going to say
25 Mr. Smith is worse than Mr. Brown, Mr. Bruce and

1 Mr. Jones. And I disagree with the government that,
2 you know, one instance of molestation is somehow less
3 serious than two or three or four or five. And I say
4 that because if I came up here and said to you that,
5 well, they only did it once so it's not that bad, the
6 Court would look at me sideways, okay. It's all bad,
7 okay.

8 So when we try and take these other cases of
9 molestations and then try to grade who is worse than
10 the other, it's not something I relish. There are
11 several clients of mine on that list and it kind of
12 forces me to weigh, but Mr. Gaccione is my client today
13 so I'm going to try to make a couple of distinctions
14 there.

15 Mr. Goodman, obviously he was sentenced to,
16 well, effectively a life sentence. I can tell you
17 Mr. Goodman was very distraught after he was sentenced.
18 I was not here in the courtroom; what I hear from his
19 activities at the ACI -- excuse me, at Wyatt. And Mr.
20 Gaccione was one of the individuals who tried to,
21 essentially, talk him down once he got back to the
22 Wyatt.

23 But Mr. Goodman's crimes I think are far, far
24 worse than my client's crimes. And I don't want to get
25 into particulars why, but when we're talking about

1 infants, we all are a little more sensitive to the
2 damage that can be done there I think as opposed to
3 somebody who is much older. I don't know why the Court
4 gave him the sentence that he did, but that's the
5 distinction I can see here, multiple victims and the
6 ages of those victims, which is distinctly different
7 from Mr. Gaccione.

8 Mr. Crisostomi was my client. Mr. Crisostomi,
9 the victim there was younger than my client -- excuse
10 me, than my client's daughter. Mr. Crisostomi wasn't
11 charged with distributing child pornography, for
12 distributing pictures of his daughter, but it came out
13 at the time of sentencing that pictures of his daughter
14 had been found on the internet. They had been found by
15 I believe it's NCMEC or whatever the government agency
16 is. So that makes it distinctly different from Mr.
17 Gaccione.

18 Mr. Leal was a completely different kind of
19 situation. Really a statutory rape. Very different
20 from this type of situation. Mr. Jones, I understand
21 he had a life sentence that was overturned and appealed
22 and he ended up with 50 years to serve, but he was a
23 repeat offender so he was somebody who had gone out and
24 molested somebody and got out of prison and then did it
25 again or tried to do it again and that's why he had

1 such a long sentence.

2 But I'd say that Mr. Jones' behavior as a repeat
3 offender is worse than what Mr. Gaccione did if we have
4 to split hairs and kind of weigh, and he only got a
5 50-year sentence. The government is asking for more
6 for Mr. Gaccione. I would say that Mr. Jones has
7 demonstrated that he was dangerous because he went out
8 and tried to re-offend. And Mr. Gaccione has not done
9 that. He's not been in that situation. So I would say
10 he's not as dangerous as Mr. Jones.

11 I don't again like this hairsplitting in trying
12 to weigh every little fact to try and come out with who
13 is worse than the other, especially when we're talking
14 about all of these sentences which are all severe. The
15 25 years I've asked for, again, is already a severe
16 sentence. I will not be here when Mr. Gaccione leaves
17 prison. I will be retired and long gone. The Court
18 won't be here. Most of the people in here will not be
19 here. That makes it, I think, a severe sentence, a
20 long sentence when we think about it that way.

21 The other thing that will happen at 25, and I
22 know the government's very concerned about this, but 25
23 years from now Mr. Gaccione is not going to be a danger
24 to his daughter. She's going to be an adult. She is
25 going to be on with her life. But he's also not going

1 to be a danger to anybody else because he'll be over 60
2 years old. He may be subject to civil commitment and
3 not actually released after that 25 years. He may
4 still be in prison for some time.

5 But if he's released, he'll be on supervised
6 release for the rest of his life. I'm assuming that
7 the Court would put him on supervised release for the
8 rest of his life. But he'll be on supervised release
9 for a long period. He'll have to register for the rest
10 of his life as a sex offender. He'll be limited to
11 where he can go and what he can do, what kind of work
12 he could do if he's able to work at that age.

13 But there are programs and systems set up to
14 monitor people after these sentences out in the
15 community. The government's concerned about his danger
16 to the public. Well, that's satisfied by supervised
17 release, civil commitment, counseling, sex-offender
18 registration and all the other infrastructure set up to
19 watch people, watch sex offenders afterwards.

20 Your Honor, I said that 25 years is probably or
21 possibly a life sentence. I say that because Mr.
22 Gaccione is not in great health. About a year -- a
23 little over a year ago, he was treated for kidney
24 failure and spent, I believe it was, a week or ten days
25 at the hospital. So he had to be removed from Wyatt

1 and taken to the hospital to be monitored.

2 Now, kidney failure is certainly no joke and he
3 has diabetes. You can see he's obese. He's got a lot
4 of factors running against him for a long life or a
5 longer life. I've asked or suggested that he be placed
6 at FMC Devens to serve his sentence, and my primary
7 reason for that was the kidney disease. I did have
8 another client that was sent there who was on dialysis,
9 had complete kidney failure, and I believe that is the
10 facility that treats kidney issues primarily within the
11 Bureau of Prisons. We just happen to be right nearby
12 Devens.

13 The other thing that Devens has is a
14 sex-offender treatment program so it's especially
15 appropriate for Mr. Gaccione to go there for both of
16 those reasons; they can deal with his medical issues
17 and the sex-offender issues. But even with them
18 dealing with his medical issues, there's no guarantee
19 he's actually going to live that long. So on a 25-year
20 sentence, it's very possible he will die in prison.
21 But he also has that glimmer of light at the end of the
22 tunnel that I think is important for the Court to give
23 to him.

24 Judge, the only other thing I'd say is, you
25 know, I object to the guidelines when the guidelines

1 are miscalculated and Ms. Picozzi knows that because if
2 I think there's a miscalculation, I would certainly go
3 and tell them and that would be handled typically
4 before we get here to court. The argument is not that
5 the guidelines were calculated; the argument is the
6 guidelines are just wrong. They are. And these
7 particular guidelines were not created by the various
8 judges that the government talked about there. These
9 guidelines were driven by Congress and a consistent
10 ratcheting up of sex-offender guidelines across the
11 board since the imposition of the guidelines back in
12 1988.

13 I'm fully prepared to debate that all along.
14 They've only gone up; they've never gone down. They've
15 only gone up by basis of legislative action. Whether
16 it was the PROTECT Act or the 1996 Sex Offender Act,
17 that's how those guidelines were developed. They
18 weren't developed by courtroom experience, and that's
19 all I meant by that.

20 So, your Honor, again, I don't want to spend too
21 much time on that. I'm asking for 25 years. It's a
22 fair sentence. I think it's appropriate for Mr.
23 Gaccione. It gives him that light at the end of the
24 tunnel to possibly make it out, and I think that the
25 Court can give him that light simply because he's made

1 these positive steps since he's been incarcerated so
2 far. Thank you.

3 THE COURT: Thank you, Mr. Fitzgerald.

4 Mr. Gaccione, do you want to say anything before
5 I impose the sentence?

6 THE DEFENDANT: Sorry.

7 THE COURT: Take your time.

8 THE DEFENDANT: I don't know if I'm saying the
9 right thing or not, but when I came in, when I got
10 arrested, I was a total jerk, you know. I only cared
11 about myself, you know. I was stubborn, selfish, you
12 know. Whatever I wanted to make myself happy is what
13 it was. I didn't want to hear nobody else's pain. I
14 didn't care.

15 For a long time I didn't want to accept what
16 happened because if I accepted what happened then, you
17 know, here I am same type of person that did something
18 to me and I didn't want to be that person. It took a
19 long time to come to a point where I could talk about
20 things to what I've done and realize how bad it was.
21 There's not a day that goes by that I don't regret what
22 I've done.

23 I mean, my kids are my life. I mean, I did
24 everything with them. I'm not going to sit here and
25 say I don't know why I did this or what it could have

1 led to. I'm not going to make excuses. The bottom
2 line is I did something horrible, and I gotta live with
3 it for the rest of my life. My daughter has to live
4 with it for the rest of her life. My family. Everyone
5 does. I ruined a lot of people's lives for a stupid
6 mistake that just because I was selfish and just a
7 total jerk, you know.

8 And that's not me. It's like I had to put a
9 wall up, I had to be this person just to protect myself
10 and I didn't know how to love people, I didn't know how
11 to treat people, I didn't know anything, you know. I
12 come here and, you know, I get the counseling, I get
13 the, you know, medication and stuff. And it took me a
14 long time to even talk about things to them and I did.
15 And that's when I realized, you know, talking about it
16 and realizing what I did is the only thing to do so
17 that you can better yourself and move on in life and do
18 the right thing.

19 So I got nothing in my life, you know, left, you
20 know. I lost my kids, I've lost friends, family,
21 everything. What do I do? Do I stay negative and be a
22 jerk for the rest of my life or do I do something
23 positive? So that's what I'm trying to do.

24 You know, I can sit here and say I'm sorry to
25 everybody in this room a thousand times. That's just

1 words in my eyes. Anyone can say that, you know. But
2 if I can prove to people that you can change, that you
3 can make a difference, then that's when people realize
4 and they can understand and, okay, this person, he does
5 understand what he did. He does, you know, regret what
6 he did. And I do.

7 I'm not going to sit here and say, well, you
8 know, it's never going to happen again. I don't know.
9 But I can tell you I don't want it to, and I'm going to
10 do whatever it takes not to let it happen again, you
11 know. That's why I go to the classes, you know. I
12 even go to parenting classes. Like, I know I'm never
13 going to be out to see my kids again. And I'm never
14 going to see them because I'm going to die in prison.

15 That doesn't mean -- even if I get 60 years, 50
16 years or life or whatever, and I know I'm not going to
17 get out, it doesn't mean I'm going to stop trying. It
18 doesn't mean I'm going to stop, you know, and go back
19 to that person. I don't like who I was, you know. I
20 drank a lot, I did a lot of stupid stuff to make me
21 happy, and I found out helping other people when
22 they're down and they're suicidal at, you know, the
23 facility and I can help them, I feel better as a
24 person.

25 So no matter what happens here today, no matter

1 if I get out or not, I'm not stopping helping people.
2 I'm not stopping getting the counseling. I'm not
3 because it's helping me, you know. I'm a different
4 person than I was when I went in there, you know. Like
5 I said, I can sit here and say I'm sorry, it will never
6 happen a billion times, but, your Honor, you know,
7 you've heard it, you know, it happens. You have people
8 say it and they come back.

9 I'm just saying that I'm not stopping giving up.
10 I'm going to keep trying no matter what happens.
11 Actions speak louder than words, and that's what I've
12 learned, you know. I'm not going to deny anything. No
13 matter what I did, as much as I did or whatever happens
14 happened, it's all wrong, it's horrible. Every day,
15 you know, I think about my kids and what I put them
16 through.

17 You know, watching TV, you know, I see families
18 on TV and, you know, how they're happy and stuff and
19 that's all I've ever wanted. And to realize, you know,
20 I screwed that up because I was selfish and stupid and
21 I'm never going to have an opportunity to see my kids
22 grow the way I wasn't able to that I want for them
23 because I screwed up, there's not a day that goes by
24 that I don't regret what I did, you know.

25 No disrespect to her; she doesn't really know

1 me, you know. She doesn't see how much I've changed in
2 the facility, you know. She knows from what I've done.
3 I don't blame anyone for thinking this is how it is,
4 you know. But again, that's how I was. I broke the
5 law. I did what I did. I have to pay for what I did.

6 But I'm not that same person, and I just want
7 everyone to understand that if they gave me a shot to
8 prove to them that I'm not that same person. I can't
9 say nothing else. I'm sorry.

10 THE COURT: Thank you, Mr. Gaccione.

11 THE DEFENDANT: Thank you.

12 MR. FITZGERALD: Stay up.

13 THE DEFENDANT: Sorry.

14 THE COURT: Mr. Gaccione, there is no doubt by
15 everything that I've read and everything that I've
16 heard today that you need to be severely punished
17 because of the severity of this heinous crime. Your
18 lawyer by recommending 25 years agrees with that, as
19 well as obviously the government does by its
20 recommendation.

21 And I don't need to recount, I don't think, for
22 the victims or for the public or anyone else, what my
23 feeling is about the severity. I don't need to any
24 further demonize you than your actions themselves do
25 alone. That's not what today is about. Ms. Barton's

1 allocation of what the crime was is what this Court
2 believes, and I don't need to repeat that, despicable
3 and reprehensible and unfathomable.

4 The question that the Court has grappled with
5 and has to grapple with is there is no punishment
6 that's severe enough for what you did. The only
7 question becomes whether the Court imposes a sentence
8 that at some point might allow you to be released from
9 prison. And if one merely looked at the seriousness of
10 the crime, the answer is easy, the answer is very easy;
11 you'd never get out of prison. But the thing that I
12 have to look at here is the human being that stands
13 before me.

14 And one thing we haven't talked about, and I
15 don't necessarily need to because it's in the
16 presentence report and you now know that I've certainly
17 considered it, is what your background was. You acted
18 against your child the way you were acted against. You
19 watched your -- in addition to that, you watched your
20 sister be sexually molested at a very young age by an
21 uncle so you saw it even in the family. You grew up
22 in, I think it was described by the probation
23 department, as horrible conditions; that no child in
24 this country or anywhere should go through.

25 There is no doubt in my mind or in science that

1 there is a correlation between what you suffered as a
2 child and what you've done here against your own
3 children and against society. There's just no question
4 about that. So the question becomes whether that cause
5 requires or mandates a cause for this Court to show
6 some mercy because that's what it would be if the Court
7 let's you out on the end. Because as I've said, if you
8 look at the severity of the crime, it requires severe
9 punishment.

10 The problem with that analysis for this Court is
11 the victim and victims in this case, Mr. Gaccione. And
12 we know that this is a lifetime scar because the scar
13 that you suffered has had a lifetime throughout yours.
14 I don't know how your child will deal with this. I
15 don't know whether she will go out and abuse when she's
16 41, how awful that would be, I just don't know, but
17 anything short of a lifetime of imprisonment will not
18 give her the safety and security that she deserves.

19 Her having the comfort and the security and
20 safety of knowing that she will never see you again
21 unless she chooses to behind bars is the only thing I
22 can offer the victim in this situation. And it is what
23 keeps me from imposing some element of mercy which is
24 oftentimes deserved for someone who was victimized the
25 way you were.

1 I don't do it out of malice, I don't do it out
2 of some political feeling about the situation. I do it
3 singularly because the victim deserves that security.
4 She needs and the others in your family and your
5 ex-wife need to know that you're going to be locked up
6 for the rest of your life.

7 For what it's worth, Mr. Gaccione, I hope as a
8 human being that you continue to change. I hope that
9 you continue your showing of mercy as a way of paying
10 back while you're in prison. I hope you continue that
11 caring and counseling way that your lawyer effectively
12 described it because that would show your remorse if
13 you were to continue that.

14 The Court's going to therefore impose the
15 following sentence: As to Counts One, Two, Three, Five
16 and Six, the Court imposes a period of 30 years. As to
17 Count Seven, the Court imposes a period of 10 years.
18 As to Counts Eight and Nine, the Court imposes a period
19 of 10 years. All of which shall run consecutively.

20 The Court also will impose a lifetime of
21 supervised release just with the standard conditions.
22 A fine isn't appropriate, neither is the additional
23 \$5,000 because of your indigency, but the Court will
24 impose the \$800 mandatory assessment.

25 Mr. Gaccione, as part of your plea

1 agreement -- is there a plea agreement?

2 MS. BARTON: There is none.

3 THE COURT: Mr. Gaccione, you have a right to
4 appeal the sentence I impose if you choose to appeal
5 it. If you want to appeal, the important thing for you
6 to know is that you need to do it or have your lawyer
7 do it within 14 days of the entry of this judgment on
8 the record. If you want help filing an appeal, just
9 ask the Clerk of Court and they will assist you in
10 filing the appeal.

11 You also have a right to appointment of an
12 attorney throughout all of the appeal, and the Court
13 will continue to appoint an attorney for you should you
14 wish to appeal the sentence I impose. Again, I'd just
15 remind you that needs to be done within 14 days of the
16 entry of the judgement on the record.

17 Do you understand your appellate rights, Mr.
18 Gaccione?

19 THE DEFENDANT: Yes, I do. Thank you.

20 THE COURT: You're welcome. Thank you.

21 Ms. Picozzi, anything further from probation?

22 PROBATION OFFICER: No, your Honor.

23 THE COURT: Anything further from the
24 government?

25 MS. BARTON: Two things, your Honor.

1 One, the government moves to dismiss the one
2 count that Mr. Gaccione did not plead to.

3 THE COURT: Any objection?

4 MR. FITZGERALD: No.

5 MS. BARTON: And also in our sentencing memo, we
6 reference that we request the restitution be left open.
7 I do not anticipate -- I understand the realities of
8 it, but I just request it due to the victim issues.

9 THE COURT: So a couple things. One is Count
10 Four will be dismissed without objection. Restitution
11 will be kept open for the statutory period of I believe
12 it's 75 days.

13 COURTROOM DEPUTY: 90.

14 MS. BARTON: 90 days.

15 THE COURT: 90 days. One other housekeeping
16 matter. The victim's mom mentioned the victim's name
17 which is now in the transcript. I'm going to order
18 that that name be stricken from the record and sealed
19 or however Ms. Schwam will do it. I want to make sure
20 that the name doesn't appear in any official record
21 that is public.

22 MS. BARTON: Thank you, your Honor.

23 THE COURT: Anything further, Ms. Barton?

24 MS. BARTON: No.

25 THE COURT: Mr. Fitzgerald?

1 MR. FITZGERALD: Your Honor, I'm not clear on
2 the sentence, I'm sorry.

3 THE COURT: The sentence is 2,280 months.

4 MR. FITZGERALD: Okay. Thank you.

5 THE COURT: Thanks. Mr. Fitzgerald, anything
6 further?

7 MR. FITZGERALD: No, your Honor. Thank you.

8 THE COURT: Mr. Gaccione, I wish you well.
9 We'll stand adjourned.

10 COURTROOM DEPUTY: All rise.

11 (Brief pause)

12 THE COURT: Mr. Gaccione, I apologize. The
13 attorneys correctly pointed out to me that perhaps the
14 record wasn't as clear as it should be in this kind of
15 case about the sentence. I believe it was, but let me
16 make sure it is. You have a right, and you need to be
17 here for that, which is why we brought you back into
18 the courtroom with both sides here.

19 The sentence of incarceration that the Court
20 imposed was as to Counts One, Two, Three, Five and Six,
21 30 years as to each of those counts to be served
22 consecutive to each other. As to Count Seven, the
23 Court imposed 10 years to be served consecutive to
24 Counts One, Two, Three, Five and Six. And 10 years as
25 to Counts Eight and Nine to be served consecutively

1 with each other and as to all the other counts.

2 Ms. Barton, did I speak it correctly?

3 MS. BARTON: I believe you did, your Honor.

4 THE COURT: Mr. Fitzgerald, did I speak it
5 correctly as you understood what I intended?

6 MR. FITZGERALD: Yes, thank you.

7 THE COURT: Mr. Gaccione, again, my apologies
8 for that. I think the record is clear now.

9 MS. BARTON: Thank you, your Honor.

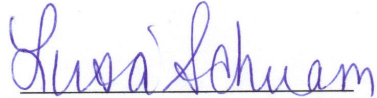
10 COURTROOM DEPUTY: All rise.

11 (Time noted: 11:47 a.m.)
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CERTIFICATION

I certify that the foregoing is a correct transcript from the
record of proceedings in the above-entitled matter.



Official Court Reporter

January 2, 2020